The Solicitors' Journal

Vol. 92 October 9, 1948 No. 41

CONTENTS

CURRENT TOPICS

Sir Richard Pinsent

WE regret to announce that Sir RICHARD ALFRED PINSENT, LL.D., M.A., partner in the firm of Pinsent & Co. since 1877, and until last year senior member on the Council of The Law Society, died on 2nd October at the age of ninety-six. Sir Richard was educated at Amersham Hall, Reading, and at Edinburgh Academy. He was articled at the age of fifteen to his uncle in Birmingham, and was admitted in 1873. From 1901 to 1903, and again in 1926, he was President of the Birmingham Law Society. In 1918–19 he was President of The Law Society. In 1938 he was honoured with a baronetcy. His son Roy, who is a partner in the firm, having been admitted as a solicitor in 1909, succeeds to the title. So long a record of high service to the profession and to the public as that rendered by Sir Richard is memorable, and will ever be a source of pride not merely to his relatives, but also to the profession which he adorned.

Judges and Security of Tenure

THE importance of security of tenure for judges in the maintenance of a free and independent judicature is one of the lessons that English constitutionalists learnt painfully in the seventeenth century and never forgot. It is a lesson which they have transmitted wherever the English forms of government have had influence. At a time when the independence and separate sovereignty of component parts of the British Commonwealth are being asserted all over the globe, it is interesting to read of the effect of these changes on the systems of judicature in the new States. Sir PATRICK SPENS, who was Chief Justice of India for four years before the attainment of independence by India and Pakistan, recently explained why the existing and probable future arrangements for the two Supreme Courts in regard to the selection and appointment of judges and security from improper removal from office would be as satisfactory as those existing before the transfer of power. In an address on 31st September to the East India Association and the Overseas League, Sir Patrick said that he wished he could be as sure that in the provincial courts the terms and conditions of service would be as good and as secure as they were before the recent changes. This state of affairs, he said, might have serious consequences on the recruiting of the best judges. Happily, there was a great tradition of learning and efficiency, of strength and impartiality, among the judges in both Dominions. When such a high authority assures us of the continuance of one of our own great traditions of freedom in so distant a continent, we may well feel proud.

Development Charge and Boarding Houses

ONE of the most startling consequences of the passing of the Town and Country Planning Act, 1947, and the regulations under it, was referred to by Sir MALCOLM TRUSTRAM EVE, K.C., Chairman of the Central Land Board, in his address to The Law Society's Provincial Meeting at Brighton recently. "It may not be widely realised," he said, "that a person who lets or sub-lets one or two rooms in his house may require planning permission to do so and that it is at least arguable that to take in a lodger or paying guest both requires planning permission and attracts a development charge. Failure to obtain such permission may, as will be seen, render a sub-letting unlawful, and thus take it out of the protection of the Rent Restrictions Acts." Sir Malcolm referred to s. 12 (3) (*a*) of the Act and *Tendler* v. *Sproule* [1947] 1 All E.R. 193, following *Thorn* v. *Madden* [1928] Ch. 847. It might be, Sir Malcolm said, that in drawing a line between what is material and immaterial the courts will refer to expediency rather than logic. The board had no intention of being meticulous in their administration of the Act. Decisions on the Rent Acts were one thing, but the collection of development charge was another. No development charge, he said, would be levied in the case of a paying guest or lodgers, unless the position was created that an ordinary person would say: "There's a business being carried on in this building." Boarding houses and guest houses were businesses for the purposes of this Act and in popular talk. Taking odd lodger or paying guest was certainly not a business in popular talk, and he doubted whether, under the Act, it was so in law.

Existing Use Value and Compulsory Purchase

SERIOUS doubts have been expressed by Mr. P. W. HODGENS in a letter to *The Times* of 30th September with regard to Sir MALCOLM TRUSTRAM EVE'S announcement at the Meeting referred to above that the Central Land Board now aim to enforce the sale of land at existing use value by exercising their compulsory purchasing powers under s. 43 of the Town and Country Planning Act, 1947. It is very unlikely that this can succeed, he wrote, for the price payable by the Central Land Board for land compulsorily acquired under s. 43 is subject to arbitration under the Acquisition of Land Act, 1919, which provides, *inter alia*, that the price shall be "the amount which the land, if sold in the open market by a willing seller, might be expected to realise." He further wrote: "Although there is now the additional stipulation that it must be assumed that development permission will be refused for such land, any general

expectation that it will prove possible to pass an additional burden on to the public, or that the Town and Country Planning Act will prove unworkable and will have to be revised, will be factors taken into account by buyers in determining the amount that they will be prepared to pay for land." His view was that it was absurd to expect that an owner would part with land at a price representing only a value for present use, as that would give him no incentive to sell, and the Lord Chancellor's statement during the passage of the Bill in the House of Lords supported that view. A problematical share in the £300,000,000 would be inadequate to offset the loss of development value. It seems clear that sooner or later this problem will become acute, and it may well be that the Legislature will be obliged to acknowledge that too rigid a control may end by defeating its own purpose.

Town and Country Planning and Playing Fields

THE National Playing Fields Association held a conference on 28th and 29th September, at which 300 local authorities in England and Wales were represented. The apprehension of the Association was expressed by Sir GEORGE PEPLER at the provision in the Town and Country Planning Act, 1947, enabling local authorities to appropriate for other purposes land which formed part of an existing common or open space. No playing field should ever be appropriated, he said, unless an equally suitable playing field was provided in replacement. By freeing local authorities from the fear of heavy compensation, the new Act should mean that in future suitability should be the first consideration in choosing the sites of playing fields. Sir George said that the Association had estimated that six acres to each 1,000 population, exclusive of school grounds, was the minimum area for playing fields. Delegates asked whether the figure of six acres of playing fields for each 1,000 population was accepted by the Government, and, on the proposal of Lieut.-Gen. Sir FREDERICK BROWNING, it was agreed that the Minister should be asked to give a ruling.

Licensees and the Furnished Houses (Rent Control) Act

ACCORDING to a report in the *Estates Gazette* of 2nd October, the Islington, Stoke Newington and Hackney Rent Tribunal have held that "the very wide definition of 'lessor' and 'lessee' in s. 2 of the Furnished Houses (Rent Control) Act, 1946, was intended to bring in both licensees and lessees proper." Fortunately, this rather debatable finding was not strictly necessary to the tribunal's decision, which was given against the applicant on the ground that the premises, which were part of a house used as a half-way hostel giving temporary accommodation to homeless persons, had been requisitioned by the local authority on behalf of the Crown, and consequently the tribunal had no jurisdiction to deal with the case. The applicant had two furnished rooms in the house and the use in common of sitting room, dining room, scullery, bathrooms and w.c. The house had twenty-nine rooms, three bathrooms, six w.c.'s, a scullery and a supervisor's office, and gas, electricity, coal, hot water, cleaning, laundry and supervisory services were added. The effect of s. 2 of the Act is to define the contracts to which the Act applies, and not to define "lessor" and "lessee," words which are used in the context merely to describe the contracting parties. Even if the maxim "*falsa demonstratio non nocet*" can apply to such a statute as this, it may well be argued that the varying rights of occupation given to different kinds of licensee are not rights contemplated by the Act as requiring control (see *ante*, p. 117). Such a decision would seem to extend the application of the Act far beyond what it was intended to cover.

The Select Committee on Statutory Instruments

IN these days, when Statutory Instruments emerge from the Stationery Office with bewildering frequency, the Select Committee on Statutory Instruments performs an important constitutional function. The duties of this committee are to scrutinise all rules, instruments and drafts laid before the House of Commons to ascertain whether the special attention of the House should be drawn to them because, for example, some unusual or unexpected use of statutory powers appears to have been made. In the recent session of Parliament, 1,189 Statutory Instruments or Statutory Rules and Orders were so examined, and of these the attention of the House was drawn to ten, including the Registration for Employment Order, 1947, and the Control of Employment (Directed Persons) (Amendment) Order, 1948. In its special report for 1947–48, the committee recommends the use of words which will be intelligible to laymen, instead of the more usual severe and technically concise style of drafting, and condemns a so-called short title which attempts to give a catalogue of the contents of the particular Statutory Instrument. The short title used as an example is "The Control of Bolts, Nuts, Screws, Screw Studs, Washers and Rivets Orders" (see S.I. 1948 No. 80).

Medical Privilege

DR. STALLYBRASS, Vice-Chancellor of Oxford University and Principal of Brasenose College, Oxford, to whom many generations of students owe their initiation into the mysteries of the law, made a public statement on 4th October on a matter which is of some importance at the present time. Addressing Westminster Medical School at the inauguration of the new academic session, he said that as a result of the new National Health Service Act there were two duties on a doctor, one to the patient and one to the State. That had a bearing on the old question, whether a doctor should tell. He understood, for example, that at the present time registration forms were open to inspection by any member of a regional board, so that it might follow that an employer serving on the regional board could discover information detrimental to any employee. It was of vital importance that the communications made to a doctor should be known to be confidential. Even in criminal cases, doctors should not be detectives. And in civil cases doctors should receive unhampered information from their patients, and not be obliged to disclose it to others. At present the injury was not great, because judges, with few exceptions, acted with good sense. A few weeks ago (*ante*, p. 516) we referred to an instance in which the law and public administration appeared to be taking divergent paths on this matter. It is a matter which deserves attention when the time comes for amending legislation.

Recent Decisions

In *Allen* v. *Allen*, in the Court of Appeal (LORD MORTON, and BUCKNILL and ASQUITH, L.JJ.), on 28th September, it was held that where a wife, who had unsuccessfully applied for an adjournment of the hearing of a divorce petition on the ground of the absence from court of a woman witness, nevertheless succeeded in her answer claiming divorce on the ground of desertion by her husband, the husband failed in his application to the Court of Appeal to admit the evidence of the woman witness, because it would in the circumstances merely create a conflict between the woman and the wife respondent.

In *Langford Property Co., Ltd.* v. *Tureman and Anor.*, in the Court of Appeal (LORD GREENE, M.R., and TUCKER and SOMERVELL, L.JJ.), on 29th September (*The Times*, 30th September), it was held that a tenant of a flat in London who slept there about two nights a week for the purpose of transacting business in London was entitled to the protection of the Rent Restrictions Acts in respect of his personal occupation of the flat, although he rarely had a meal there and, in fact, lived with his wife and family in a cottage which he had in the country. The court held that a man's business might require him to be in different parts of the country within a week, and there was nothing to prevent him from having a home in those different places in respect of which he would have the statutory protection.

SOLICITORS' ACCOUNTS—III

THE requirements of the 1945 Rules have now been examined and methods of showing the necessary information in the cash book and client's ledger suggested. It remains to consider some of the books and records which, though less important, nevertheless must be "properly written up."

In their explanatory memorandum on the 1945 Rules, The Law Society state that one of the minimum requirements is a record showing the division of bills of costs between profit costs and disbursements. There are two main methods of recording disbursements paid out on behalf of clients. One is to have a clients' disbursements account to which all such items are posted. In this system the total amount of such expenditure forms a debit to the costs account in the private ledger. As bills are rendered, so the relevant disbursements are included therein, and the gross amounts of the bills, etc., brought to credit of the costs account, via the bills delivered book. Where such a system is used, it is the usual practice to write up itemised bills of costs on a day-to-day basis, using two columns, one for disbursements and one for profit costs. To keep copies of bills of this type would involve a good deal of additional time and paper, especially where the bills are hand-written. Therefore it is suggested that a solicitor who uses this method should have extra columns in his bills delivered book so that the division of the total charge between profit costs and disbursements can be clearly shown. This is quite adequate to satisfy the Rules, but it is submitted that it may not be so satisfactory for the solicitor himself as the keeping of copies of actual bills. The other method of recording clients' disbursements is to have either a special disbursements column in the clients' ledger or a separate disbursements ledger. In both these cases the amount put through the bills delivered book for posting to the credit of costs account will be the profits costs only, so that, unless the disbursements are specially entered in a memorandum column in the bills delivered book, this book will not give the required information, and it will therefore be necessary to keep copies of all bills sent out, filed in such a manner that reference to them can easily be made. In all cases disbursements come out of the No. 1 account, either through the petty cash book or by direct posting from the cash book, so that when, under the second method, the total of disbursements to be included in a certain bill of costs is either extended from the special column or transferred from the disbursements ledger account relating to that matter, the appropriate entry must be made in the solicitor's money (or own account) column (see figs. 2 and 1 in last week's article).

The next point to be considered is the question of making transfers from one account to another in the clients' ledger. In this connection it is a fact that, in spite of all the text books, many solicitors and others (including, alas! accountants) dispense, if they possibly can, with the use of a transfer journal. It is not proposed here to point out the merits of the journal as a book of original entry; what is important is to realise that transfers, however made, always must keep their original character of client's or solicitor's money, whatever the purpose of the transfer may be. Thus, if Mrs. A owes the solicitor money for costs, and Mr. A, who has plenty of money in hand, gives instructions for a transfer to be made to settle his wife's debt, their two accounts would appear as shown in fig. 3.

Mrs. A

	Solicitor's Money	Client's Money	Total		Solicitor's Money	Client's Money	Total
	£	£	£		£	£	£
To Balance brought forward ..	21		21	By Transfer from Mr. A's account on his instructions		21	21
„ Transfer from Client's account		21	21	„ Transfer to No. 1 account ..	21		21
	£21	£21	£42		£21	£21	£42

Mr. A

	Solicitor's Money	Client's Money	Total		Solicitor's Money	Client's Money	Total
	£	£	£		£	£	£
To Transfer to Mrs. A's account on your instructions ..		21	21	By Balance brought forward ..		1,000	1,000
„ Balance carried forward ..		979	979				
	—	£1,000	£1,000		—	£1,000	£1,000
				By Balance brought forward ..	—	£979	£979

(Fig. 3)

Unless all transfers are carried out in this manner, they will destroy the agreement between the clients' balances and the amount at the credit of client bank account. It will be noticed in the example given that, subsequent to the transfer from one account to the other, a bank transfer is effected to appropriate the amount made available in the wife's account, against the costs outstanding.

Another point of some practical importance is the method to be adopted in dealing with sums received as deposits in cases where a preliminary contract names the solicitor as stakeholder. Most solicitors formerly made a practice of crediting such deposits to the account of the client whose property was being sold, but when this money is first received it is not the money of that particular client and, in fact, it may never become his. Therefore it ought not to be so credited, because the solicitor could not make payments out of such money on his client's instructions, or deal with it in any way as that client's money. It is suggested that where such deposits are received, a deposits account should be opened in the clients' ledger. When the cash is received it will be credited in the client's money column of this account, having been paid into client account at the bank. If the sale is subsequently completed the deposit will be transferred, either with or without the use of a transfer journal, to the account of the vendor. If the sale falls through, cash will be refunded to the intended purchaser or his agents, and no entry will appear in the vendor's account at all.

If the books have been correctly kept, there should be no balances other than credit balances on the client's money column in the clients' ledger. A debit balance on this column *must* indicate that more money has been drawn from client bank account than was in hand for that particular client. Assuming this state of affairs does not arise, it follows that the total of all the credit balances on the client's money column should be equal to the amount standing at the bank on the client account, or client accounts if there is more than one. Whilst there should be no debit balances on the clients' money column, it does not follow that there should be no

credit balances on the solicitor's money column. Amounts may have been received on account of costs, or as agreed fees for work not performed at the time of balancing, and these items create credit balances, though they are not clients' money.

All this talk of Rules, and keeping books properly, naturally prompts the question—what happens if something goes wrong? It is quite likely that from time to time errors will occur; the clerk who keeps the books may make a mistake in an addition or subtraction and cause too much or too little to be transferred from client account to No. 1 account. In certain cases the result of such an error may be to take more from the client account than some particular client has in hand at the time. The golden rule is to correct all errors as soon as they are discovered. If this is done, no accountant should quibble at giving a clean certificate, provided that steps have been taken by the solicitor at reasonable intervals to see whether errors have occurred. But suppose some mistake has been made involving a considerable sum of money, and it is impossible for the solicitor, through lack of resources, to put his client account in order at the time of discovery: what is he then to do? By far the best course for him to take is to go straight to The Law Society and tell them the facts. The Law Society are not ogres who sit in their Chancery Lane lair waiting to pounce upon any unfortunate who commits an unwitting breach of the Rules. They will probably come to some reasonable arrangement for putting the matter right, if they are satisfied that the error arose through inadvertence. They might, however, take a very different view if the first intimation of anything untoward came to them by the qualification of the accountant's certificate.

Whatever the system may be which the solicitor has decided to use, accounting problems may arise from time to time about which he feels in some doubt. He would be well advised to consult on these matters the accountant whom he proposes to ask to certify the correctness of his books: there is no doubt that the necessary assistance will be willingly given. A little such co-operation between the two professions should make the business of obtaining a practising certificate a mere formality, just as it was in the past.

S. G. H.

LAND REGISTRY PRACTICE—IV

CHARGES

THE Act uses the word "charges," but that word includes what is usually called a mortgage. The main provisions relating to these are in ss. 25 to 36. Section 25 is set out below. The interpolated numbers refer to the observations which follow:—

25.—(1) The proprietor of any registered land may by deed—

(*a*) charge the registered land with the payment at an appointed time [1] of any principal sum of money either with or without interest;

(*b*) charge the registered land in favour of a building society [2] under the Building Societies Acts, 1874 to 1894, in accordance with the rules of that society.

(2) A charge may be in any form [3] provided that—

(*a*) the registered land comprised in the charge is described by reference to the register or in any other manner sufficient to enable the registrar to identify the same without reference to any other document; [4]

(*b*) the charge does not refer to any other interest or charge affecting the land which—

(i) would have priority over the same and is not registered or protected on the register,

(ii) is not an overriding interest. [5]

(3) Any provision contained in a charge which purports to—

(i) take away from the proprietor thereof the power of transferring it by registered disposition or of requiring the cessation thereof to be noted on the register; or

(ii) affect any registered land or charge other than that in respect of which the charge is to be expressly registered [6]

shall be void.

(1) *An appointed time.*—This enables a purchaser or the chargee and the Registry to ascertain that the mortgage money has become due within the meaning of s. 101 of the Law of Property Act, 1925, and that the powers conferred by that section can be exercised. But the appointed time need not be a mere date. It may be a succession of dates, when the money is repayable by instalments, or it may be the happening of an event or events, such as bankruptcy, liquidation of a company, or the various other events which make debenture stock repayable.

(2) *Building society.*—Although this section refers only to building societies, rr. 92, 93 and 152, which deal with certain consequential matters, apply also to friendly societies and industrial and provident societies. It looks as if these latter societies had been overlooked when the Act was drawn. But there can be no possible objection to these societies lending on mortgages in accordance with their rules, so the Registry treats them all in the same way. The amounts in each case borrowed from these societies are not usually large, but in point of numbers charges in their favour are a considerable majority of all charges which are registered.

Solicitors for these societies were amongst the first to realise that registration of title has its advantages. It is a pity so many of them have a habit of not putting their addresses in their charges.

(3) *Any form.*—Presumably this means any form which can operate as a charge, legal or equitable. The specimen charge (form 45 in the Schedule to the rules) is merely equitable, but s. 27 gives a registered charge the effect of a charge by way of legal mortgage, unless made by demise or sub-demise and unless there is something to the contrary in the charge. Section 34 confers on the proprietor thereof all the powers conferred by law on a legal mortgagee.

(4) *Without reference to any other document.*—This is to ensure that the charge is self-contained. There are occasions when this is inconvenient. If a man buys unregistered land, mortgages it and then registers the title (a very common occurrence), there is no title number at the date of the mortgage, and the land can best be defined by reference to the conveyance. A similar position arises if a man buys part of the land in a registered title and mortgages it (as he can under s. 37) before he is registered as proprietor. Rule 81 and the note to the specimen charge recognises this difficulty, and authorises such modifications of the form as may be necessary to define clearly the land affected.

(5) Proviso (*b*) to subs. (2) is to prevent the charge giving purchasers notice of some adverse interest which is not disclosed by the register. For example, the register may ignore restrictive covenants, either as a result of a mistake by the Registry, or because such covenants were not duly registered under the Land Charges Act, 1925. In either case it is undesirable that the registered charge should give purchasers notice of them and so lift a corner of the curtain created by registration, and possibly provoke awkward questions.

As regards overriding interests—such as short leases, easements, etc.—there is no objection to the charge referring to these, because the title is deemed to be subject to them.

(6) Subsection (3) reproduces, with slight alterations, subs. (4) of s. 9 of the Land Transfer Act, 1897. The mischief aimed at by sub-para. (i) is not very clear. Apparently it was thought chargees might want to insert such provisions.

Sub-paragraph (ii) is explained by the learned authors of "Brickdale and Stewart-Wallace on the Land Registration

Act, 1925," as dealing with the right to consolidate. If it limits the right to consolidate two or more charges on two or more titles, unless the right is noted on the register, under r. 154, it is a pity it does not say so in plainer language. Or does it mean that if a mortgage comprises two titles and is registered as a charge on only one the registration confers on the chargee no rights over the other title? But this seems too obvious to require special enactment. If any reader can give a better explanation of subs. (3), it would be very welcome.

Express covenants to pay principal and interest, or (in a mortgage of leaseholds) to pay rent and observe covenants in the lease, are not necessary in registered charges, as s. 28 implies them.

Section 94 of the Law of Property Act, 1925 (as to tacking of further advances), does not apply to charges on registered land, and such charges to secure further advances or a current account have a code of their own, embodied in s. 30 of the Act, as amended by s. 5 of the Law of Property (Amendment) Act, 1926.

If there is such a charge on the register, and a second charge is presented for registration or any other entry applied for which would prejudicially affect the priority of any further advance under the first charge, the registrar must give the first chargee notice, and the first chargee is not affected by any such other entry, unless a further advance is made after the date when the notice ought to have been received in due course of post. And if the first chargee suffers loss by reason of any failure on the part of the register or the post office, he is entitled to be indemnified, unless the loss arises by reason of an omission to register or amend the address for service. The omission to register or amend the address for service presumably means an omission by the first chargee. It is unthinkable that the Act means an omission by the registrar to do this.

As a result of this section, charges have to be perused carefully to see if they are to secure further advances, and an appropriate entry made to show this. It is not always easy to decide the question. Capitalisation of interest, a charge on the land of future premiums payable on a life policy included in the security, or of costs and expenses incurred for the protection of the security, are usually not regarded as further advances.

If the chargee is under an obligation, noted on the register, to make further advances, the subsequent registered charge shall take effect subject to any further advances made pursuant to the obligation.

If further advances are made, additional stamp duty may have to be impressed on the charge. If the charge is filed in the Registry, it is sent on request to the stamp authority. Otherwise the Registry is not concerned unless the payment of the extra stamp duty is to be noted on the register, in which case a further fee is payable.

Section 35 authorises the cancellation of a charge " on due proof of the satisfaction " thereof. In the case of building, friendly and industrial and provident societies, the evidence of satisfaction is almost always the usual statutory receipt endorsed on the charge. This, of course, attracts no stamp duty.

Other charges can be discharged in the same way if the land and any other security, such as a life policy comprised in the charge, are all discharged, but this involves reconveyance stamp duty. Rule 151 also authorises a discharge in terms of form 53, which is a mere admission by the proprietor of the charge that the charge has been discharged. It can be adapted to meet the case of a discharge of part only of the land or part only of the debt.

Form 53 in the Schedule to the rules contains the following note: " Where the charge was for future advances or for an indefinite amount there must be added to the final discharge, for the purpose of stamp duty, a statement of the total amount or value of the money at any time secured." This note is part of the statutory form and suggests that reconveyance stamp duty is payable on a form 53. But, in spite of this, the Registrar—no doubt on competent advice—has, for many years, acted on the assumption that a discharge in this form attracts only receipt duty (now 2d.) if under hand, and 10s. if under seal.

W. J. L. A.

THE FINANCE ACT, 1948—III

THERE are a number of complicated sections of the Finance Act, 1948, which deal with the special contribution in relation to trust income.

Section 53 concerns trusts where trustees are able to resort to capital for augmenting income of beneficiaries. It provides that in computing aggregate investment income for the purposes of the special contribution payments of this nature are to be excluded, but not for the purpose of computing total income. It is also provided that there shall be excluded from a person's investment income any payment received through one trust from another trust which is attributable to other than the income of the other trust.

Section 56 deals with recovery of the special contribution from trustees. A person liable to pay the contribution who is also a beneficiary in a trust is to be entitled to resort to the trustees for a proportion of his contribution. The amount for which application may be made to the trustees is the proportion of the contribution that his trust income bears to his aggregate investment income. An alternative method is for the beneficiary to give notice in writing to the Special Commissioners requiring them to apply direct to the trustees for the relative proportion. In a case where this notice is not given and the individual fails to pay the contribution at the expiration of twenty-eight days after it became due, direct application will be made to the trustees for their proportion.

The person from whom recovery can be claimed by the contributor depends on whether the trust continues, or whether it has come to an end. If the trust continues, recoupment to the contributor has to be made by the trustees, or in the case of a settlement within the Settled Land Act, 1925 (or the similar legislation in Northern Ireland), from the tenant for life. If the trust has come to an end, the contributor has to go against the person who immediately after that event was entitled to the trust property or fund; and if there is more than one such person, they are liable in proportion to the value of their interests. No right of recovery exists against a mortgagee of the trust property; in this case recovery has to be claimed from the person entitled by law to the trust property but for the mortgage or charge.

The Act makes it clear at what point of time a trust is deemed to have come to an end. It is provided that recovery shall be sought from the person entitled to the trust property which has become vested in him or his assignee: where a part only of the asset has become vested, recovery of the proportion referable to the assets vested in him is required from the person in whom the property is so vested, and of the remainder, calculated by reference to the assets still vested in them, from the trustees or tenant for life.

Where a trust receives income from one or more trusts (none being a foreign trust, against which there is no right of recovery), the trustees of the first trust may give notice in writing to their beneficiary or to the Special Commissioners before any assessment upon them has become final, requiring direct application for the proportionate contribution to be made to the trustees of the other trust or trusts.

The Act stipulates time limits in connection with the right of recovery. A contributor is not entitled to exercise a right of recovery unless he gives notice to the persons concerned within six months of his payment of the contribution. Trustees who have received such a notice have one month within which to give notice of their intention to exercise their right to require application to be made to trustees or tenant for life under another trust or settlement.

We have already made an incidental reference to the fact that there is no right of recovery against a foreign trust. If the contributor recovers against a United Kingdom trust, and the income of that trust (or a proportion thereof) comes from a foreign trust, the Special Commissioners have to repay to the former trust the proper proportion of the amount which the contributor has recovered. If the contributor has given notice of recovery against the United Kingdom trust, but has not yet exercised his right, he is entitled to a similar repayment. A foreign trust is defined as one the administration of which is governed by the law of a place outside the United Kingdom. The mere fact that all the trustees were abroad would not make a trust a foreign one if the forum of administration were here.

Section 57 of the Finance Act, 1948, gives power to indirect contributors to realise or otherwise apply trust property in payment of the contribution. The powers of a trustee or a tenant for life (whether arising under the Settled Land Act, 1925, or that Act as applied by s. 28 of the Law of Property Act, 1925, or otherwise) to apply or direct the application of capital money and to raise money by mortgage will be exercisable for the purposes of payment of the contribution either in advance of or after assessment.

As between persons interested in capital and income under a trust, the rule is that the amount of the contribution is divided as though it were a payment of estate duty on the cesser of a life interest in the trust funds. There is a proviso that, where there is an annuity due to an annuitant who is not liable for the contribution and no annuity fund has been appropriated, no reduction in the annuity will be made as a result of payment of the contribution in respect of other beneficiaries' interests.

Relief will be granted where death duties (these include estate duty, succession duty or legacy duty) are due on account of a death before the end of the year 1947–48. When the death duties have been ascertained it will be assumed that the payment had been made immediately after death. Where investment income affecting the amount of the contribution arises to a beneficiary and death duties are due for payment out of the capital funds, the aggregate investment income will be reduced by an amount representing interest on the death duties paid. The exact determination of this relief is left to the Special Commissioners.

Where a person has paid his contribution and is unable to exercise his full rights of recovery against trustees or a tenant for life because they have insufficient funds, the Special Commissioners will limit the liability of the trustees or tenant for life and the contributor will be granted appropriate repayment.

B.

THE JUDGE ADVOCATE GENERAL

In the House of Commons on 21st September, Mr. Shinwell, the Secretary of State for War, announced that changes in the position of the Judge Advocate General and in the organisation of his department would be made in conformity with the interim recommendations on that point of the Lewis Committee on Army and Air Force Courts Martial. From 1st October the Judge Advocate General will be appointed on the recommendation of, and be responsible to, the Lord Chancellor instead of the Secretaries of State for War and Air, although the responsibility for acting or not acting on the Judge Advocate General's advice in particular cases will remain with the Secretary of State concerned.

Further, the functions of the Judge Advocate General and his department will be limited to advisory and quasi-judicial duties, whilst his former functions of pre-trial advice and prosecution (including the collection of evidence against, and the prosecution of, war criminals) will be transferred to directorates of the service departments.

Thus, at last, the anomalous state of affairs is ended under which a permanent official, appointed by the head of a service department, was responsible on the one hand for advising his chief on all matters of military law and for acting, through a judge advocate, as judicial adviser to the members of courts martial, and on the other hand for advising commanding officers upon the collection of evidence and the preparation of prosecutions in intended courts martial and for supplying officials from his department to conduct such prosecutions. At the same time it was also the Judge Advocate General's duty to review court martial proceedings and to consider petitions against the findings of such courts, this last function being the nearest approach to an appeal against a conviction by court martial.

The objections to such a system seem obvious to a civil lawyer, who would be shocked at the idea of the functions of the Director of Public Prosecutions, the Home Secretary, the Court of Criminal Appeal, and, to some extent, the High Court Bench, being exercised by a single individual, but the system has on the whole been operated with a high regard for the rights of the individual soldier. However, in the stress of conditions prevailing at the end of the recent war an attempt was made by the local military authorities in Malaya to hold a mass trial by court martial of some hundreds of men, and that was the main cause of the appointment of the Lewis Committee.

The Committee's full recommendations have not yet been made known, but two interim proposals have been carried into effect: the first, which has now been in operation for over a year, excludes the judge advocate from the deliberations of a court martial on findings but not on sentence, while the second is the one now announced. These reforms go far to assimilate the practice of the military tribunals to that of the ordinary criminal courts, thus adapting a system which may have been adequate for the small professional forces of yesterday to meet the conditions of the huge citizen-armies of modern times.

The changes in the importance attaching from time to time to the office of the Judge Advocate General are, as one would expect, a reflection of the part played by the Army in the nation's affairs. During the Napoleonic Wars he was a Privy Councillor and Minister, and usually also a member of Parliament, whose duty it was to advise the Crown on the legality of the proceedings of courts martial. Later, the importance of the office declined, and in 1892, having ceased to be a paid or political appointment, it was merged into that of the president of the Probate Divorce and Admiralty Division. In 1905 the position of the Judge Advocate General was considerably altered and a new appointment was made of a permanent official under the Secretary of State for War, to act as legal adviser to the War Department.

Under the latest reforms, the main functions of the Judge Advocate General will be (*a*) the superintendence of the administration of military and air force law; (*b*) the provision and appointment of judge advocates at trials by courts martial and military courts; (*c*) the review of proceedings and the tendering of legal advice on confirmation or review or on petition; (*d*) making recommendations to quash proceedings where appropriate; (*e*) the custody of the proceedings of all courts martial and military courts; (*f*) assistance to each Secretary of State in the formulation of advice to the Sovereign regarding proceedings of any court martial or military court; and (*g*) advice to the two Secretaries of State on general legal questions affecting the Army and Royal Air Force as may be required.

E. T. E. M.

Divorce Law and Practice

THE RUSHCLIFFE REPORT AND DIVORCE

THE recent short session of Parliament reminds us that in the not too distant future that body will once again be returning to its work, and that of the business that is to be carried out at an early date the implementation of the recommendations of the Rushcliffe Committee will be one of the most important items so far as members of the legal profession are concerned. The Attorney-General has promised that Parliament is to consider this at an early stage in the coming session. As it is probable that the reform of poor persons procedure will result in a greater increase in divorce cases than in any other branch of the law, it may be of interest to see how the Committee's proposals are likely to affect procedure in divorce and matrimonial matters.

The general nature of the recommendations is, doubtless, by now fairly common knowledge, but as the implications of them upon the Divorce Division will not be apparent unless the recommendations common to all civil actions are appreciated it is intended to give first a brief survey of the recommendations as they affect civil cases.

The Committee recommend that the present system of aiding poor persons to litigate, whereby persons with an income under a certain amount (or with less than a specified amount of capital) are assisted in their litigation to such an extent that they pay virtually nothing for it, be abolished. It recommends that its place be taken by a new system whereby people are aided to an extent which is approximately inversely proportional to their income. To those who have to deal with poor persons' claims at the present time this is a welcome suggestion indeed, for it has long been an absurd situation with which they have had to deal. To take, for example, the case of undefended divorces, a person with an income of under a certain amount, in practice about £4 10s. per week, may obtain his or her divorce free of charge except for a sum of about £5 to cover incidental expenses. Whenever the income exceeds that amount the full costs have to be paid and that usually amounts to some £50–£70 in an undefended divorce. The results of such an arbitrary method of administering a social service have become very clear since the value of money has fallen and fewer people have incomes as low as prescribed by the existing regulations. The result, so far as divorce is concerned, is to drive people who are in fact too poor to litigate, though their incomes exceed slightly the required amount, to do one of two things: either to attempt by perjury to bring themselves within the income group or to remain bound by a miserable marriage such as could be dissolved by their financially more, or less, fortunate brethren. The way in which the Committee recommend that this new system be put into operation is simple. They suggest that incomes be considered after such items as tax and those items at present required by statute to be left out of account by the assistance board in determining payments have been deducted. They then go on to say that a married person with a net income of less than £4 a week computed by this method should not be bound to pay anything towards the cost of litigation provided that he can satisfy the committee granting the aid certificate that he has a *prima facie* case. Anyone with an income of more than £4 (we are here only concerned with married people) should pay half the difference between a year's income at his net rate and a year's income at £4 per week, e.g., a man earning £5 per week, they suggest, should pay £26 towards the cost of proceedings. Anyone whose net income exceeds £420 should receive no aid at all. In all these computations the combined incomes of the wife and the husband are to be considered. The Committee are further of the opinion that a man should have to use his capital to provide funds for litigation so far as that capital exceeds £50.

They wish to see this assistance available in proceedings in the House of Lords, Court of Appeal, High Court and county courts in all cases where the applicants' circumstances justify it.

Such, briefly, are the recommendations to be applied to all types of civil action. In view of the peculiar nature of divorce certain specific suggestions are made with regard to this type of work. A matter which, though not exclusively likely to arise in divorce, is most frequently found in divorce cases is the necessity for making preliminary inquiries. The Committee were of opinion that it would be wrong for the taxpayer to have to pay for this and it should be borne by the parties except in so far as it may be recoverable from the other side in accordance with the established principles of taxation. The reasons for this opinion were twofold: first, they considered it undesirable that public money should be spent in speculative inquiries into the conduct of individuals with a view to civil litigation, more particularly in matrimonial cases; second, they considered that were they to recommend otherwise it would in practice be impossible to devise effective safeguards against abuse.

The other special recommendation with regard to divorce proceedings that the Committee made concerns the question of security for costs, which is, of course, a matter peculiarly affecting divorce proceedings. Here the Committee recommended that, in the case of a wife applicant for legal aid, if it should be decided that it was a fitting case for a certificate to be granted then in the first place she should only be granted aid up to the time when she can get an order for security for costs from her husband and, if it subsequently proves impossible for her to obtain such an order, a further aid certificate should be granted. Similarly, where a husband is ordered to give security for costs, such an order should be treated as complied with either (*a*) if he lodges with the registry a certificate from the local committee after consultation with the assistance board to the effect that he is unable to comply with the order, or (*b*) where the local committee, after consultation with the assistance board, certifies that he can only contribute a certain sum towards the amount ordered, if he lodges the certificate and pays into court the amount named in the certificate.

So far we have only considered the recommendations as they affect the civil courts. There remains, however, one section of matrimonial jurisdiction which is of great importance, particularly in the more humble walks of life. This is, of course, the magistrates' courts. The Report speaks strongly of the necessity for legal aid for both sides in civil cases coming before the magistrates and, with a view to ensuring that this happens, it makes a number of suggestions designed to bring to the notice of the people entitled to legal aid their rights and to ensure that if there is any doubt as to whether a certificate should or should not be granted then the doubt should be resolved in favour of the person applying. This would have the wholly beneficial effect of making reasonably certain that the cases of the parties are properly presented, and may thereby succeed in ridding the magistrates' courts of that pathetic and all too common figure, the person who does not really understand what it is all about.

Finally, it should be remarked that the Committee make a clear distinction between the assistance that should be given in actual litigation such as we have already discussed and assistance to be given in the form of advice. In this latter connection they suggest that legal advice should be available to poorer people for the sum of two shillings and sixpence at centres to be set up throughout the country. These centres are to be staffed by whole-time paid solicitors. The Committee suggest in fact a system which will replace "poor man's lawyers" with a more uniform organisation.

There can be no doubt that all practitioners with experience of our matrimonial courts will await with impatience the enactment into law of this admirable advance in social service; and despite the pressing claims on parliamentary working time of matters political and economic, one may hope that its realisation is at last around the corner.

P. W. M.

Company Law and Practice

PROSPECTUSES AND ALLOTMENTS UNDER THE COMPANIES ACT, 1948—I

THE changes introduced by the new Act with regard to prospectuses and allotment are many in number, but in their effect they are evolutionary rather than revolutionary. Broadly speaking, the framework of the 1929 Act has been retained and the new provisions have been grafted on, in order to remedy such defects as have emerged in practice. These new provisions readily divide themselves into those which deal with the prospectus itself and those which deal with allotment under the prospectus. This article deals with the prospectus itself, and it is intended to deal with allotments in a further article. (In this article any reference to "the Act" means the Companies Act, 1948.)

A prospectus is defined as "any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company" (s. 455 of the Act). This is in terms identical with the 1929 Act; but s. 55 of the Act attempts further to define "an offer to the public." Section 55 (1) provides that "the public" shall include any section of the public whether selected as members or debenture-holders of the company concerned or as clients of the person issuing the prospectus or in any other manner. Section 55 (2), however, qualifies this by stating that s. 55 (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it. In view of the wording of the section it is suggested that the application of s. 55 (2) is likely to be limited to an issue of shares to existing shareholders or debenture-holders where there is no right of renunciation.

The matters required by s. 38 of the Act and Sched. IV thereto to be set out in a prospectus are in many respects different from those required under the 1929 Act; in general the tendency is that more information must be set out than previously. To catalogue these amendments is outside the scope of this article, but attention is called to some of the more important changes: (i) the contents of the memorandum of association need no longer be set out; (ii) the time of the opening of the subscription lists must be stated; (iii) various particulars must be given with regard to options to subscribe for any shares or debentures of the company; (iv) with regard to property purchased or acquired (or proposed to be purchased or acquired) by the company under para. 9 of Sched. IV, short particulars must be given of any transaction relating to that property within the two preceding years in which any promoter, director or proposed director of the company had a direct or indirect interest. Attention is also called to the changes in the reports required (by Pt. II of Sched. IV) to be set out in a prospectus, and in particular (i) the auditors' report on a company's profits and losses must cover five years instead of three; and (ii) the report must deal with the assets and liabilities as well as the profits and losses not only of the company, but also of its subsidiaries (if any). Alternative methods of presenting this information are provided by Sched. IV, Pt. II, para. 19 (3).

Section 38 of the Act, however, does not apply to the issue of a prospectus or form of application relating to shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange (s. 38 (5) (*b*) of the Act). This exception is in addition to that contained in s. 35 (5) of the 1929 Act, which related to the issue to existing members or debenture-holders either with or without a right of renunciation (s. 38 (5) (*a*) of the Act). A further exception to the provisions of s. 38 is provided by s. 39. Where an offer of shares or debentures is made to the public by a prospectus issued generally (a prospectus is issued generally when it is not issued to existing members or debenture-holders of the company) and application is made to a prescribed stock exchange for those shares or debentures to be dealt in or quoted on that stock exchange, the latter may in certain circumstances grant a certificate of exemption at the request of the applicant. This certificate must certify that, having regard to the proposals as to the size and other circumstances of the issue and to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of Sched. IV would be unduly burdensome. If such a certificate is granted, then a prospectus which gives the particulars and information as required by the stock exchange shall be deemed to comply with the requirements of Sched. IV. These exemptions apply not only to prospectuses but also to offers for sale under s. 45 of the Act.

Where an expert's report is contained in a prospectus, s. 40 of the Act now provides that the expert's written consent must have been given thereto and not withdrawn before the issue of the prospectus. Moreover, a statement to this effect must appear on the face of the prospectus. It will be noted that the term "expert" includes "engineer, valuer, accountant and any person whose profession gives authority to a statement made by him." Before the registrar can register a prospectus, s. 41 of the Act provides, *inter alia*, that it must (i) have endorsed thereon any expert's consent to its issue; and (ii) where it is issued generally, have attached to it copies of contracts as required by Sched. IV or, where a contract is not in writing, a memorandum of particulars. Further, it must specify, or refer to documents included in the prospectus which specify, any documents required by s. 41 to be endorsed or attached to the copy so delivered (s. 41 (2)).

The provisions in the Act with regard to civil liability for untrue statements go further than those in the 1929 Act. The defence by a director that an untrue statement is that of an expert can now only be relied on if it is proved that (i) the defendant had reasonable grounds to believe and did believe that the person making the statement was competent to make it, and (ii) the expert had given his consent as required by s. 40 and had not withdrawn it before delivery of a copy of the prospectus for registration, or to the defendant's knowledge before allotment.

Section 43 provides for contribution as between those civilly liable for the untrue statement. The 1929 Act made no provision for criminal liability, so that action had to be taken under the Larceny Act, 1861, s. 84. Section 44 of the Act now provides, however, that where a prospectus contains any untrue statement any person who authorises the issue of the prospectus shall be criminally liable, unless he proves either that the statement was immaterial, or that he had reasonable grounds to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true. For the purposes of ss. 43 and 44 a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith (s. 46 of the Act).

S.

A Conveyancer's Diary

ENFORCEMENT OF RESTRICTIVE COVENANTS AND EQUITABLE RELIEF

THE machinery provided by s. 84 of the Law of Property Act, 1925, for the discharge or modification of restrictive covenants affecting land is expressly stated to be without prejudice to any concurrent jurisdiction of the court. The principles on which this jurisdiction is exercised have been examined in a long line of cases, but in some respects they are not as well settled as it is desirable that they should be, and there is in consequence some diffidence among the profession in advising a client to take his chance under the concurrent jurisdiction rather than to make an application under s. 84. This is a pity, for while s. 84 provides a remedy in the case of obsolete or obsolescent covenants which on the whole works speedily and conveniently, it has certain disadvantages. There is, in the first place, no appeal from a decision of the authority dismissing an application (*Re* 108, *Lancaster Gate* [1933] Ch. 419). And again a prospective purchaser, in the present state of the property market, is often torn between a desire to clinch a bargain and apprehension as to the consequences if he should proceed to put the property to uses which are prohibited by covenant. The latter circumstance need not, of course, quite apart from the concurrent jurisdiction, always act as a brake on the prospective purchaser, for there are many loopholes in the law relating to restrictive covenants. It is, for example, quite possible for a situation to arise in which a person is bound by a covenant, and yet there may be nobody able effectually to enforce the covenant. Such cases are not infrequent in practice (see, e.g., *Miles* v. *Easter* [1933] Ch. 611).

However, for the purposes of examining the principles on which the concurrent jurisdiction mentioned in s. 84 is founded, it should be assumed that the covenant in question is not unenforceable by reason of any technical defect. The phrase " concurrent jurisdiction " is not very happily chosen, for it imports the idea that there is some doctrine whereby a covenant may, so to speak, be excised from the title under which a person holds land. This is not the case. This jurisdiction was referred to by Clauson, J. (as he then was), in *Re* 108, *Lancaster Gate*, *supra*, at p. 424, in the following words: " This court, being a court of equity, has a limited power, where the person entitled to enforce certain restrictions in regard to the user of land seeks to enforce them by action, to refuse to interfere or enforce them, if it is satisfied (I am putting this in general and possibly not quite accurate terms) that the restrictions have become obsolete." This statement makes it clear (1) that the jurisdiction only comes into play where the plaintiff seeks the aid of equity in enforcing a covenant on the principle of *Tulk* v. *Moxhay* (1848), 2 Ph. 774, and where no question of purely legal liability on the covenant arises (as to which, see *Formby* v. *Barker* [1903] 2 Ch. 539), and (2) that there is no question of a person being able to make an application to a court of equity analogous to an application under s. 84 for the discharge of a covenant. He must await an action, and the jurisdiction is a shield, and not a sword.

Within these limits, however, equity has acted on the principle that in certain circumstances a person *prima facie* entitled to the benefit of a covenant restricting the use of land shall not be allowed to enforce it. The appropriate circumstances are usually stated as three in number, viz., acquiescence or laches; acts or omissions on the part of the plaintiff or his predecessor in title permitting such a change in the state of affairs as to make the enforcement of the covenant inequitable; and finally, a change in the character of the neighbourhood with similar results. I have seen attempts to state these circumstances in somewhat more precise terms, but I doubt whether the authorities really justify a narrower definition.

Nothing need be said of acquiescence, for the approach in cases of this kind is pure common sense: *Sayers* v. *Collyer* (1884), 28 Ch. D. 103, is as good an example of this kind of case as any other. The difficulty lies in finding a real distinction between the other two cases.

In granting relief to a person seeking to enforce a covenant which does not run at law, the court looks not only to the form of the covenant itself, but also to the object for which it was entered into; and if, owing to circumstances which have since occurred, that object can no longer be attained, equitable relief will be refused (*Knight* v. *Simmonds* [1896] 2 Ch. 294). The question which arises is whether a change in circumstances since the date of the covenant, which is in no way dependent upon any act or omission on the part of the person seeking to enforce the covenant (or his predecessors in title, which for this purpose comes to the same thing), will render the covenant unenforceable in equity, or whether some privity to the change on the part of the plaintiff is necessary. This question becomes of great importance in cases where there has been a change in the character of the neighbourhood and this is relied upon as a defence to an action to enforce a covenant. The earlier cases seem to suggest that a change in the character of the neighbourhood *per se* is not sufficient (see, e.g., *Duke of Bedford* v. *Trustees of the British Museum* (1822), 2 My. & K. 552, and the remarks thereon in *Sayers* v. *Collyer*, *supra*). Lindley, L.J., in *Knight* v. *Simmonds*, *supra*, took the other view, and a more recent authority to the same effect is *Sobey* v. *Sainsbury* [1913] 2 Ch. 513. From the practical point of view a defendant may find it difficult, in an action on a covenant of long standing, to prove that the plaintiff (or his predecessors in title) had by his conduct caused the changes which render the enforcement of the covenant an irksome burden on the property, except in the case of large building estates which are still, at the date of the action, controlled or managed by the plaintiff.

A possible reconciliation between the two divergent lines of authority appears in *Chatsworth Estates Company* v. *Fewell* [1931] 1 Ch. 224, where the defence was based on two grounds: a general change in the character of the neighbourhood, and an allegation that the change had been brought about by the acts or omissions of the plaintiff company or its predecessors in title. Farwell, J., dismissed the action. On the first ground he considered that it was necessary for the defendant to show, as a condition of success, that there had been such a complete change in the character of the neighbourhood as to render the covenant completely valueless to the person seeking to enforce it, so that an action on the part of such person could not be regarded as *bona fide* at all. On the second ground the learned judge held that the question was analogous to the doctrine of estoppel, and as the defendant could not show that the plaintiffs by their conduct had represented to the defendant that the covenant was no longer enforceable, he could not succeed on this part of his case either.

This decision shows that in a suitable case a restrictive covenant would not be enforced if there has been a complete change in the character of the neighbourhood, irrespective of whether that change can be linked with any acts or omissions on the part of the person seeking to enforce the covenant. Most restrictive covenant questions nowadays relate to conversions into flats, and on this authority I think a purchaser may often be advised that the risk of converting a house subject to a covenant to use as a single dwelling-house only is negligible; and a breach of the covenant may often be accompanied by fewer risks than an application under s. 84, which has the inevitable effect of drawing attention, till then perhaps dormant, on to the proposed user.

" A B C "

Landlord and Tenant Notebook

HOME

IT has, I understand, not yet been definitely established who it was who first drew a comparison between those who make a nation's laws and those who write its songs, a comparison which puts legislators in their place. Many of us must often have been reminded of the comparison, and when I discussed *Curl* v. *Angelo* (1948), 92 SOL. J. 513 (C.A.), in last week's "Notebook" (92 SOL. J. 550) I could not help thinking of one point made by the writer of "Home Sweet Home," namely the be-it-never-so-humble point. For that decision goes far to warrant the proposition that the tenant of a room with, or perhaps without, a gas-ring or other cooking apparatus, is in a stronger position than a tenant of a number of rooms whose tenancy includes a right to use a kitchen jointly with other persons. And I mentioned that there were many authorities in which judges, describing the protective provisions of the Increase of Rent, etc., Restrictions Acts, had used the expression "home," instancing *Reidy* v. *Walker* [1933] 2 K.B. 266.

Now, reversing the decision of a county court in *Langford Property Co., Ltd.* v. *Tureman and Another*, reported in *The Times* of 30th September (and see *ante*, p. 562), the Court of Appeal has made reference to *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.), which the judge in the court below had purported to follow. In *Skinner* v. *Geary* possession was claimed from a tenant who had not lived in the house concerned for some years, and whose sister, with her husband, occupied it when proceedings were brought: the county court judge held that the defendant was not preserving it as a residence for himself; the Divisional Court came to the same conclusion, Talbot, J., referring to *Haskins* v. *Lewis* [1931] 2 K.B.1 (C.A.), and citing an *obiter dictum* of Romer, L.J., paraphrasing one of Scrutton, L.J., as a pronouncement that the principal object of the Acts was "to protect a person residing in a dwelling-house from being turned out of *his home*"; and when the Court of Appeal upheld the Divisional Court, Scrutton, L.J., himself cited this paraphrase with approval.

I italicised both words in the expression "his home" because *Langford Property Co., Ltd.* v. *Tureman* raises, at least indirectly, the question whether protection will extend to an individual who holds tenancies of more than one dwelling-house in respect of all tenancies. The nearest we had got to having this question answered was the decision in *Brown* v. *Draper* [1944] K.B. 309 (C.A.). The defendant in that case was the wife of a tenant who had left her, and the house they lived in, and his furniture in that house (in consequence of a matrimonial dispute). The plaintiff landlord gave him notice to quit, after which he ceased paying rent, but he was not made a party to the action and at the hearing he gave evidence that (*a*) he had no further claim on the house, but (*b*) that on an application for alimony *pendente lite* he had said his wife and son were in the house for which he was paying rent, and (*c*) that if his wife took care of the furniture she could continue to have the use of it and he would pay the rent of any house she moved to. The Court of Appeal held that statement (*a*) could not confer jurisdiction to make an order for possession, that the husband was still in possession, the defendant being his licensee; so no order could be made.

The possibility of retaining possession by a licensee or by furniture was referred to more recently in *Brown* v. *Brash* (1948), 92 SOL. J. 376, but neither *Brown* v. *Draper* nor that case raised the question whether one person can hold more than one protected tenancy directly. In *Brown* v. *Draper* the question whether the defendant's husband had any other tenancy was not gone into; in *Brown* v. *Brash* absence was due to incarceration in one of H.M. prisons. Exclusive possession may be a feature of such, but no one would suggest that the other tests of a tenancy were satisfied; so even if one refers to the writer of songs again, and remembers how Byron makes the Prisoner of Chillon leave his prison with a sigh, one can hardly think of the Rent Acts applying. Prosaic courts have even denied that a gaol is a dwelling (see *Dunston* v. *Paterson* (1858), 5 C.B. (N.S.) 267).

In *Langford Property Co., Ltd.* v. *Tureman and Another*, the second defendant was tenant of a London flat, and the first defendant was found to be residing in the flat as his guest. The tenant was a Greek merchant, whose business took him to various parts of the country; he had a cottage in Buckinghamshire, where his wife and family lived, and in fact he spent, on the average, only two nights a week in the London flat, and rarely took a meal there. The Court of Appeal considered the case a border-line one, but held that the tenant was protected. The law may, I think, be found in two statements in the judgment of Tucker, L.J.: (1) the fact that the tenant had a house in Buckinghamshire did not prevent the other premises from being *his home* for the purposes of the Rent Restrictions Acts; (2) there was nothing to prevent him having a home in different places.

The second statement is, of course, important. Reading Romer, L.J.'s, "to protect a person residing in a dwelling-house from being turned out of his home" in *Skinner* v. *Geary*, *supra*, one is apt to visualise a state of affairs in which one person has one home, even if one remembers that Romer, L.J., was summarising the effect of the judgment of Scrutton, L.J., in which there was a suggestion that a tenancy of a week-end cottage might be protected. And, of course, generally speaking, one home is the normal quantity; as witness such expressions as "a home from home," the "Home Office," and the "home team." But on reflection one realises that there have been many and are a few people who have had both town houses and country houses, and if one met such a person in London and he said he was going home one would take him to mean that he was going to his London house, while if one met him in the country and he made a similar statement, one would understand that he was making for his country residence.

The important difference between the position of such a person and that of the defendant tenant in *Langford Property Co., Ltd.* v. *Tureman* is that the former's family would normally move from the one house to the other whenever he himself did. While the facts of the latter were, as mentioned, classified as border-line, it is not perhaps easy to reconcile the decision with the judgment of Scrutton, L.J., in *Skinner* v. *Geary* (which was cited) as a whole. For, while the learned Lord Justice, when dealing with the question whether the Acts applied to protect a "non-occupying tenant," and emphasising the intention-to-return factor, gave as examples of persons not excluded (*a*) a sea captain who is absent for months, and (*b*) a tenant who spends week-ends in a house (a passage much relied upon by tenants of "week-end cottages"), he qualified the sea captain, at all events, as one who "has his wife and family living there while he is away." Indeed, the second defendant might be said to come perilously near the description given in a far later passage, where, after saying that one object of the Acts was to provide as many houses as possible at a moderate rent, Scrutton, L.J., went on: "A man who does not *live in* a house and never intends to do so is, if I may use the expression, withdrawing from circulation that house which was intended for occupation by other people." If it were not for the continued presence of the first defendant and his family as guests, this description would have fitted the second defendant pretty closely.

R. B.

Mr. MAURICE F. COOP, B.A., head of the legal department of the Dunlop Rubber Company, has been appointed secretary to the company in succession to Sir Charles Tennyson, C.M.G., who has retired. Mr. Coop was admitted in 1932.

Mr. W. D. PARTRIDGE, Junior Assistant Solicitor, Middlesbrough Corporation, has been appointed Assistant Solicitor in the office of the Clerk of the Nottinghamshire County Council. He was admitted in 1947.

"PEACE WITH TEETH"

Two articles were, with perhaps deliberate intent, juxtaposed in a recent issue of *The Times*. The first, under the above title, reported some remarks of Marshal of the R.A.F. Lord Tedder, on the subject of the armed watchfulness that now forms the basis of this country's defence policy. The second described the exhibits at the recently opened London Dental Trade Exhibition.

We must look to our "teeth," said Lord Tedder, advocating the preparedness of the armed forces, if we were to maintain a peace worth having. In these days of power politics the fate of the impotent was tragic indeed.

By a happy coincidence the delivery of the speech containing this bold metaphor coincided with the opening of an exhibition which included such devilish weapons of the dentists' armoury as spring-tempered explorers, telescopic mouth-gags, drill chucks, bite locators and ("for the management of the recalcitrant patient") a quick-release restraining strap. This last device may appear to some to forebode an unwarranted attempt to extend the maxim *volenti non fit injuria*. It is one thing for the suffering patient to imply, by taking his seat in the dentist's chair, his consent to the infliction upon him of a certain amount of physical hurt which would otherwise constitute an assault; his motive in so doing is to secure, in the long run, that peace in the internal nervous system which still eludes him in the external international sphere. But it is a nice question whether that wise motive, coupled with the intention to show a certain amount of submission, is to be taken to justify the use of a "quick-release restraining strap," subversive alike of personal dignity and of the elementary right of self-defence; the very name of the appliance, for all its equivocal adverbs and adjectives, has something ominous about it. So also has the phrase "recalcitrant patient"—etymologically, at any rate, a contradiction in terms.

The dentist who makes use of this new-fangled device places himself, as it seems, in a well-merited dilemma. His explorations inside the oral cavity, and the torment he inflicts, are justifiable in law only under the *volenti* doctrine; the extent of the patient's *volentia* is a question of fact. If and when the dentist oversteps the limit of that *volentia* he will, it is apprehended, commit a tortious act. Now, the crucial moment when the patient, by means of words, gestures, groans or struggles, is attempting to signify that the limit is being or has been overstepped—when he ceases to be passive and becomes "recalcitrant"—is the very moment when, by definition, the "restraining strap," will be brought into use, effectually preventing him from translating his indicated refusal to bear more into some overt act, like leaping out of the chair, or kicking his tormentor in the face. Useless, surely, for the practitioner to plead that the patient was a consenting party *ab initio*; the patient's "recalcitrance" is sufficient evidence to the contrary. And equally useless, one would imagine, to plead ignorance of the patient's withdrawal of the consent originally implied; you cannot deprive a man of all power of resistance and call it acquiescence.

On this principle, it is submitted, the redoubtable Crampton had a good cause of action against Valentine, the dentist in "You Never Can Tell," who caught him off his guard and anæsthetised him, before extracting a troublesome molar, after Crampton had expressly forbidden him to use gas for the operation. The dentist's rights, in this case as in the other, are co-extensive with the patient's consent. If this be not so, where is the process to stop? If I ask my dentist to fill a cavity in one aching tooth, is he thereby entitled to extract an entire row which he considers to be in poor condition? Surely not.

Roman methods of conquest, according to Tacitus, merited the aphorism *solitudinem faciunt, pacem appellant*. This maxim has been followed, in recent years, by more than one nation. The law of England will not, it is hoped, encourage its adoption by dentists. Let there be, in the words of Lord Tedder, "peace *with* teeth."

A. L. P.

"TO-MORROW WE'LL BE SOBER"—Maxim of Equity

PUBLICANS and bartenders throughout the country must have learned with a great measure of satisfaction that their attempts to reconcile the conflicting claims of sobriety and sociability are countenanced by the law. The device commonly employed by such persons for this purpose of keeping a bottle of diluted spirit—or, it might be, of coloured water—at hand, from which to serve themselves when the generosity of convivial customers will take no refusal, whatever strict moralists may think of it, now has the recognition, if not the blessing, of the Lord Chief Justice himself. The insidious wiles of the ubiquitous inspector—introducing himself this time under the ingratiating *cognomen* "weights and measures"—were thus set at nought in *Thompson* v. *Ball* (1948), 92 SOL. J. 272 when he sought to stigmatise this innocent practice as "selling adulterated whisky to the prejudice of purchasers contrary to s. 3 (1) of the Food and Drugs Act, 1938."

"It was a matter of general knowledge," runs the report of his lordship's judgment, "that licensees kept a bottle of diluted whisky at hand for their own use, because customers asked them to have drinks, and then there was less chance of licensees getting intoxicated."

The pungent clarity of the judicial mind has ever been the citizen's refuge. It might, indeed, be thought that such mundane pursuits as eating and drinking—to say nothing of being merry—would only in these latter days of government by regulation have drifted into that technical fog through which only the brightest lights of Bench and Bar can show the way. But, in truth, the state of man's digestion hardly deserves its textbook reputation as a question of fact. If the Englishman traditionally takes his cakes and ale in peace, it is because the English lawyer can look to an equally long tradition of guiding this important function through a maze of forensic nicety.

"Pint of mild and bitter, please, Miss!" runs the cry from a hundred dry throats in a hundred four-ale bars. Enjoy this blended nectar, but reflect, as you drink, how much you owe to the judges who saved it from oblivion in 1887. A landlord had been mixing a weaker with a stronger beer—not openly, but surreptitiously in the cellar. If this, argued his counsel, was the offence of "adulterating or diluting beer," why, then, "a publican cannot sell to a customer a glass of 'half and half,' if one of the two kinds of beer composing the mixture is stronger than the other, as it always is." The Divisional Court may have blanched at the subtle horror of this dilemma—the report (*Crofts* v. *Taylor* (1887), 19 Q.B.D. 524) unfortunately tells us nothing of their demeanour. But fearlessly they upheld the conviction, and Grove, J., in an inspired judgment, swept away the clouds lowering on the barman's horizon. "It has been objected," he said, "that this interpretation will prevent a publican from selling to a customer a glass containing two kinds of beer of different strengths, such as what is popularly known as 'half-and-half,' but I do not accede to that view; the publican might sell the two kinds of beer in two different glasses and allow the customer to mix them, and even if the publican mixed them himself, assuming that he did it in the presence of the customer, I am clearly of the opinion that he would be acting as the agent of the customer in so doing."

Gastronomic-legal problems, of course, like others, are sometimes so intractable that even the sharpest minds cannot point the solution. Students of Anson's "Law of Contract" are familar with the great case of *Chapronière* v. *Mason* (1905), 21 T.L.R. 633, and may have been misled into supposing it to have decided as a matter of law that a bath bun with a stone in it is not reasonably fit for the purpose of eating. In fact it decided no such thing. Collins, M.R., struggled manfully but in vain: "The jury found that the bun was reasonably fit for the purpose of being eaten. The plaintiff now said that that finding was wrong. His contention was that the only way in which a bun could reasonably be expected to be eaten was by the process of mastication, and that there was no evidence to support a finding by the jury that this bun was reasonably fit for the purpose of being eaten by the process of mastication.

"It seemed to him" (his lordship) "to be clear that the verdict was unsatisfactory. The presence of a stone of considerable size in a bath bun was a very untoward incident, and, speaking for himself, he should be inclined to say that such a bun was not reasonably fit for mastication.

"The difficulty presented itself that unless they could say that the verdict was one which no reasonable jury could have arrived at, they had no alternative but to leave it alone."

Whereupon his lordship adroitly turned to another issue and found against the defendant on the ground of negligence. Thus the fascinating legal questions which revolve about the stone masquerading as a currant remain free of authority. Perhaps one day a bolder judge may get his teeth into them.

The public house and the tea-shop, as sources of litigation, must finally yield pride of place to the institutions of the dining table. These were once well-nigh inviolable and clothed by the

law with a dignity and respect to which one can only look back with acute nostalgia. For the finest flower in an exquisite bouquet of authorities one must, without doubt, select *Osborn* v. *Hart* (1871), 23 L.T. 851. It would be presumptuous to attempt to paraphrase the report when both the facts and the law are so concisely expounded in the judgment of Chief Baron Kelly :—

> "The real question is whether the defendant has been guilty of a breach of contract by not delivering wine of the quality which he contracted to deliver. Now we have the evidence given at the trial to guide us ; but, as is natural, the parties give different accounts of what passed. I take it that the plaintiff in effect said to Symons, 'If you have any very superior port wine, I will make room for it.' These words formed the basis of the contract. Can it be said that a contract for the supply of superior old port wine is fulfilled by supplying wine which is described by witnesses as almost undrinkable ? It is only necessary to use common sense to understand that a contract to sell superior wine is not fulfilled by the merchant if he delivers wine of an inferior quality."

How happy we might be if the law, as the learned Chief Baron states it, could still be regarded as sound to-day.

N. C. B.

REVIEWS

Prideaux's Precedents in Conveyancing. Twenty-fourth Edition. By J. Brook Richardson, M.A., LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1948. London : Stevens & Sons, Ltd. ; The Solicitors' Law Stationery Society, Ltd. 60s. net.

This volume is the first instalment of the post-war edition of "Prideaux," and the other volumes are promised as soon as the extensive changes made by the Agriculture Act, 1947, in the law of agricultural holdings can be incorporated. The volume before us deals with conditions of sale and conveyances, and apart from general revision it differs little from its predecessor. Users of "Prideaux" will generally applaud this conservative treatment; but in some respects it has gone too far in this edition, and there are gaps which could have been filled to advantage. War-time legislation still presents many a puzzle, and its problems do not decrease. The references to the Courts (Emergency Powers) Acts are meagre in the extreme and most unilluminating. There is no form for the assignment of a war-damage claim, nor to provide for the possibility of requisitioning between contract and sale. The new certificates of value could surely have been inserted by way of *addendum* if it was impossible to incorporate them in the text. But omissions apart this edition appears to maintain the old standard, especially in the simplicity of the language used in the forms for which "Prideaux" has always had a deserved reputation. The printing and general get-up of the book are excellent.

Every Man's Own Lawyer. By a Barrister. Sixty-sixth Edition. 1948. Kingston Hill, Surrey : The Technical Press, Ltd. 25s. net.

The first edition was published in 1863. The number since then testifies to the vitality and popularity of this work. The present edition was published on 12th July this year. A vast amount of new law required incorporation and the editor has succeeded well in his task. A thorough examination of the book showed the accuracy and conciseness of the information given on every branch of the law. The layman who refers to it can feel confident that he has available the leading features of any subject ; it remains for him to read and weigh every word carefully and to read the whole of the information provided. A few selected headings of sections will indicate the wide scope of the work : Actions by Poor Persons ; Coroners' Inquests ; Contracts and Agreements ; Stock Exchange Law and Practice ; Illegal Detention of Goods ; Distribution of Intestate's Property ; Trespass to Land ; Custody and Control of Children ; Trusts and Trustees ; Horses and Dogs ; Goods Stolen or Lost ; Innkeepers and their Customers ; Powers of County Councils ; Rent Restrictions Acts ; Income Tax ; and War Disability Pensions.

This is an excellent book of reference for the home and for the office.

Copinger and Skone James on The Law of Copyright. Eighth Edition. By F. E. Skone James, B.A., B.C.L., Bencher of the Middle Temple. 1948. London : Sweet & Maxwell, Ltd. 63s. net.

This well-known work requires no introduction to the profession. The present Editor, whilst overhauling the whole text in each successive edition, is rewriting one or more chapters on each occasion. In this edition there appears a rewritten chapter on "Arrangements between Authors and Publishers," which is full of practical value for solicitors who are advising authors on draft publishing agreements. Much recent case law has been incorporated, though we cannot find a reference to *O'Gorman* v. *Paramount Film Service, Ltd.* [1937] 2 All E.R. 113. When the Editor next selects a chapter for complete revision we would recommend that on "International Copyright," which lacks the clarity of the remainder of the text.

NOTES OF CASES

HOUSE OF LORDS

FACTORIES : SAFE SYSTEM OF WORKING

Bristol Aeroplane Co., Ltd. *v.* Franklin

Viscount Simon, Lord Porter, Lord Simonds, Lord du Parcq and Lord Normand. 29th July, 1948

Appeal from the Court of Appeal.

The plaintiff's husband was employed in the defendants' aircraft factory. A special tool which he had to use being broken, he himself repaired it, using the wrong kind of steel, instead of having it repaired in the tool-repairing section, which was in the charge of a foreman. In consequence the repaired tool fractured in use, and the plaintiff was flung from the raised platform on which he was working and sustained fatal injuries. Wrottesley, J., dismissed an action by the widow. The Court of Appeal allowed her appeal, holding that the means whereby the workman had succeeded in obtaining the steel which he had used constituted an unsafe system of working as he was insufficiently skilled in such matters. The employers now appealed. The House took time for consideration.

Viscount Simon (the other noble lords concurring) said that the appeal must be allowed, as the allegations of negligence on the part of the employers were not made out. Now that the Law Reform (Personal Injuries) Act, 1948, was in force, it was to be expected that, where a workman had been injured at work and an action was brought in respect of his injuries, the allegation of failure to provide a safe system of work would lose much of its importance. Such an allegation was properly made on sufficient evidence, but resort to it largely arose out of the desire to secure compensation when the claim might otherwise be defeated by the plea of common employment. In the present case the plaintiff still retained her rights under the Workmen's Compensation Acts.

Appearances : *Casswell*, K.C., and *Kenneth Bain* (*Peacock and Goddard*, for *Taylor, Son & Corpe*, Bristol) ; *Scott Henderson*, K.C., and *McGougan* (*Pattinson & Brewer*, for *Lawrence, Williams & Co.*, Bristol).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

CROWN'S ACQUISITION OF COMPANY : VALUATION OF SHARES

Short and Another *v.* Treasury Commissioners

Lord Porter, Lord Uthwatt, Lord du Parcq, Lord Normand and Lord Morton of Henryton. 29th July, 1948

Appeal from the Court of Appeal ([1948] 1 K.B. 116 ; 91 Sol. J. 482).

In 1943 the Government decided to take over the business of Short Brothers (Rochester and Bedford), Ltd., under reg. 78 (1) (*b*) of the Defence (General) Regulations, 1939. By a Treasury Order, dated 31st May, 1943, the price to be paid for the ordinary and "A" ordinary shares was fixed at 29s. 3d. a share. The claimant shareholders, the appellants, being dissatisfied with that valuation, claimed under reg. 78 (7) that the value of their shares should be determined by arbitration. By reg. 78 (5) the price to be paid by a competent authority in respect of any shares transferred by virtue of an order made under the regulations was to be "a price which, in the opinion of the Treasury, is not less than the value of those shares as between a willing buyer and a willing seller." Before the arbitrator the claimants contended that the price of their shares should be fixed by first ascertaining the value of the undertaking as a whole and then determining the proportionate value of the separate classes of shares and individual shares within each class. On that basis they claimed a price of 41s. 9d. a share. The Treasury contended that the correct method of valuation was to take the prices of the shares ruling on the Stock Exchange at the date of the transfer, and that on that basis the price should be 29s. 3d. a share. Morris, J. (91 Sol. J. 85), held, on questions left by the

arbitrator, that, on the true construction of reg. 78 (5), the Treasury's contention was correct. The Court of Appeal affirmed that decision, and the claimants now appealed. The House took time for consideration.

THE HOUSE construed the words " any shares " in reg. 78 (5) as referring to the shares in an individual holding. It was accordingly the shares as individually held, and not of the undertaking as a whole, whose value had to be ascertained in accordance with the regulation. Appeal dismissed.

APPEARANCES: *Sir David Maxwell Fyfe*, K.C., and *Cecil Turner* (*William Charles Crocker*); *Sir Cyril Radcliffe*, K.C., and *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

TRUSTEE: COMMISSION: "INCOME" FROM TRUST PROPERTY

Union Trustee Company of Australia, Ltd. *v.* Bartlam and Others

Lord Simonds. 23rd July, 1948

Appeal from the High Court of Australia.

The appellant company and the respondents, the wife and son of a testator, were executors and trustees of his will. The will empowered the trustees to carry on any business in which the testator was engaged. In pursuance of that power the trustees carried on two farming stations of the testator. The company instituted proceedings by way of originating summons for the determination of the question, arising on the construction of s. 17 of the Victorian Trustee Companies Act, 1928, what commission they were entitled to charge in respect of the farming stations as trust property. The Full Court of the Supreme Court of Victoria held, by a majority, that the company's commission should be determined according to the gross income of the property. The High Court reversed that decision, holding that it should be determined according to the net income arrived at after deducting costs and working expenses as ascertained from the proper accounts of the appellant company. The company appealed. (*Cur. adv. vult.*)

LORD SIMONDS, delivering the judgment of the Board, said that the narrow point was what, on the true construction of s. 17, was the meaning of the words " income received by such trustee company as executor . . ." Whatever the context, the answer to the question, what was the income of a business, must be the balance of profits ascertained according to the ordinary methods of accountancy. It neither added to nor detracted from that meaning that the words " received by the trustee " followed. The Board agreed with the words of Dixon, J., in the High Court that gross returns from a business could not properly be described as its income. Appeal dismissed.

APPEARANCES: *Sir Cyril Radcliffe*, K.C., *Pascoe Hayward*, K.C., and *J. H. Stamp* (*Coward, Chance & Co.*); *Sir Andrew Clark*, K.C., and *Wilfrid Hunt* (*Blyth, Dutton, Wright & Bennett*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

LIBEL: LETTERS WRITTEN ABROAD AND PUBLISHED IN ENGLAND

Bata *v.* Bata

Scott and Wrottesley, L.JJ., and Wynn Parry, J. 29th July, 1948

Appeal from Jones, J., in chambers.

The plaintiff was the chairman of two British companies registered in England. The defendant wrote in Switzerland a circular letter defamatory of the plaintiff which was sent to three persons resident in London. The master granted the plaintiff leave to serve a writ on the defendant out of the jurisdiction under R.S.C., Ord. 11, r. 1 (*ee*), whereby " service out of the jurisdiction of a writ . . . may be allowed . . . whenever . . the action is founded on a tort committed within the jurisdiction." Jones, J., reversed the master's order, holding that no tort had been committed within the jurisdiction. The plaintiff appealed.

SCOTT, L.J.—WROTTESLEY, L.J., and WYNN PARRY, J., agreeing—said that Lord Esher had said in *Hebditch* v. *McIlwaine* [1894] 2 Q.B. 54, at p. 61, that the material part of the cause of action in libel was not the writing of it but its publication. Counsel for the defendant relied on *George Monro, Ltd.* v. *American, &c., Corporation* [1944] K.B. 432 for the proposition that the tort here had been committed in Switzerland. That case was irrelevant for present purposes. *R.* v. *Burdett* (1821), 4 B. and Ald. 95, which concerned seditious libel, quite a different matter, also afforded no support for the defendant's proposition. It was the publication of the libel which alone justified the issue of the writ. The master's order was correct. Appeal allowed.

APPEARANCES: *Sir Valentine Holmes*, K.C., and *Quass* (*Herbert Oppenheimer, Nathan & Vandyk*); *Ashworth* (*Slaughter and May*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

EVIDENCE: PLAINTIFFS' USE OF DEFENDANT'S ANSWERS TO INTERROGATORIES

Endeavour Wines, Ltd. *v.* Martin and Martin

Birkett, J. 23rd July, 1948

Action.

The plaintiffs, having bought cider from the defendants at 15s. a gallon, alleged that that price was excessive and had resulted from a secret bargain between their servant and one of the defendants. They brought this action for damages and return of money overpaid. The defence was that 15s. was a fair price. Counsel for the plaintiffs, after opening the case, put in answers made by the first defendant to interrogatories. It was argued for the defendants that, having thus made that defendant's answers part of their case, the plaintiffs could not rely on evidence by their own witnesses to contradict those answers.

BIRKETT, J., said that the answers to the interrogatories had been put in simply that they might be before the court. The fact that the plaintiffs had made them part of their case did not compel the court to disregard the rest of their evidence. By putting in the answers, the plaintiffs had done no more than put sworn facts before the court, and the court must consider those facts with all the other evidence in the case.

APPEARANCES: *G. Pollock* (*Cosmo Cran & Co.*); *Waddy* (*Oswald Hickson, Collier & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: CORRUPTION

R. *v.* Dickinson

R. *v.* de Rable

Humphreys, Birkett and Pritchard, JJ. 9th July, 1948

Appeals from convictions.

The appellant, Dickinson, was a responsible official of the Ministry of Aircraft Production, and the appellant, de Rable, was his driver. They were charged on count 1 of an indictment with conspiring corruptly to obtain £600 from a company as an inducement to Dickinson to show favour. Counts 2 and 3 charged Dickinson with corruptly obtaining two smaller sums, part of the £600. The company in question were manufacturers of small tools. Dickinson was concerned with engine production. The defence was that the £600 represented an honest commercial commission on orders placed with the company by two other companies. The Common Serjeant directed the jury that if Dickinson was using his important position as a Crown servant to obtain commission corruptly, it was immaterial that the work (manufacture of small tools) in relation to which he obtained the commission was not work with which his own work (engines) brought him into direct contact. The Crown conceded that on the facts the Common Serjeant's direction was wrong that the onus of proving that the two smaller sums were not received corruptly lay on Dickinson under s. 2 of the Prevention of Corruption Act, 1916. Both appellants were convicted on count 1, and Dickinson on counts 2 and 3. They appealed.

PRITCHARD, J., giving the judgment of the court, said that the direction on count 1 was correct. Section 1 of the Prevention of Corruption Act, 1906, made it an offence " if any agent corruptly . . . obtains . . . from any person . . . any . . . consideration as an inducement . . . for doing or forbearing to do . . . any act in relation to his principal's affairs . . . " That wording was designedly framed very widely. As the second direction was incorrect, the conviction of Dickinson on counts 2 and 3 must necessarily be quashed. The jury had been wrongly directed on the question of onus on those counts. The court could not be sure that the jury, in convicting the appellants on count 1, were not basing themselves on the two smaller payments which, having regard to the misdirection, could not be said to be corrupt. The convictions on count 1 also must therefore be quashed. Appeals allowed.

APPEARANCES: *Serjeant Sullivan*, K.C., and *Hugh Forbes* (*Holt, Beever & Kinsey*); *R. E. Seaton* (*Director of Public Prosecutions*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TO-DAY AND YESTERDAY

LOOKING BACK

It is interesting to trace the career at his Inn of Court of an average successful barrister of the sixteenth century. According to the Middle Temple Bench Book, Richard Lewknor, second son of Edmund Lewknor, of Tangmere in Sussex, was admitted on 9th October, 1560, and, as the Inns were then residential colleges, he was admitted to a chamber which he shared with one or two other members. As he advanced in seniority he occasionally gave security to the Society for payment of the dues of younger men, as, in 1579, in the case of Lewis, son and heir of his elder brother Thomas, also a member. In 1580 he had reached the stage of assisting at the great educational institution of the bi-annual Reading, being "bound to stand at the cupboard" with three others. Orders to this effect were made in February and June. In Lent, 1581, it was his turn to be Reader but he assented to another holding the Reading, provided he did not lose seniority, and again he stood at the cupboard. He held his own Reading in the autumn and in the following Lent and autumn he assisted the Readers. In 1593 at Lent he was due to hold his second Reading "but because of the sickness last summer and because one of the gentlemen in the House died of the plague, he could not have access to his chamber so the Reading failed." In 1594 he was appointed a Serjeant-at-Law and migrated to Serjeants' Inn. Meanwhile he had had other activities. He sat for some time in Parliament for Chichester, of which he was Recorder from 1588 to 1600, when he was knighted and appointed Chief Justice of Chester. He held this post till he died in 1616, aged seventy-six.

PLAY ABOUT A MURDER

It is reported that the Lord Chamberlain has refused to license a play based on people involved in the Thompson-Bywaters murder case. An objection, it seems, was raised by the brother of the murdered man when the play, "A Pin to See a Peep-show," was already in production. Another play, "People Like Us," based on the same incidents, was written in 1923 and only produced this year. It had been running for some time before objection was made to the second play, and by that time it was thought that there was little point in interfering with the first. The trial of Edith Thompson and Frederick Bywaters, her lover, took place at the Old Bailey in December, 1922, and their joint conviction and execution created a considerable sensation at the time. In the Ilford background of the tragedy there was no promise of high drama. A shipping clerk and his wife, a milliner's book-keeper and manageress, each earning £6 a week and carrying on with a business life to support a childless home, were living in ill-matched, discontented monotony in a remote suburb. He seems to have been very much the average man; she was emotional, highly strung, vivacious and good-looking. At twenty-seven she sought solace and romance in the society of a lad of nineteen, employed in a clerical capacity on board a steamship. He even accompanied the Thompsons on a holiday to the Isle of Wight.

SUBURBAN TRAGEDY

Soon Edith Thompson was writing the most compromising letters to her lover. "It is the man who has no right who generally comforts the woman who has wrongs. This is also right, darlint, isn't it? as things are, but, darlint, it's not always going to be, is it? You will have the right soon, won't you?" or again: "Darlint, you must do something this time. I'm not really impatient but opportunities come and go by—they have to—because I'm helpless and I think and think and think." Some of the letters clearly referred to ways and means of removing the unwanted husband and there were newspaper cuttings about poisonings and accounts of experiments with ground glass. The climax of the affair was that one night, as the Thompsons were walking home along their road, returning from a London theatre, Bywaters stabbed his mistress's husband to death. Unfortunately for her, he had kept all her letters and accordingly she found herself beside him in the dock at the Old Bailey. Both went into the witness-box but failed to explain away the deadly written word. Mr. Justice Shearman directed the jury that if a woman said to a man "I want this man murdered" and he promised her and did commit the murder, she was also guilty. Both were convicted and, though many thousands petitioned the Home Secretary for her reprieve, both duly suffered the extreme penalty.

THE LAW SOCIETY'S PROVINCIAL MEETING

SUMMARY REPORT

The proceedings of The Law Society's first post-war Provincial Meeting, held at Brighton, opened on Tuesday morning, 21st September, at the Dome, with an address by the Mayor. The President then delivered his inaugural address (*ante*, p. 551), which was followed by a discussion on the work of the Council of The Law Society. Questions were raised as to the possibility of seeing that Whitehall paid greater attention to the views of the Council, and in particular of attempting to bring pressure to bear for a revision or a consolidation of the Rent Restrictions Acts and the Income Tax Acts. On the question of administrative tribunals it was asked if steps could be taken to press for the principle that solicitors should be given the right of audience. It was also suggested that guidance should be given on the way cases should be conducted before such tribunals. It was pointed out in reply that the Council certainly pressed for the right of representation whenever a draft Bill was before Parliament, but there was a necessity for the profession to assist in this matter in a public relations capacity by making it clear whenever the opportunity arose that the presence of a lawyer at the tribunal in no sense prevented the proceedings from being friendly and did help the tribunal to arrive at the true facts.

It was asked whether steps were being taken to urge the implementing of the Roche Report on Justices' Clerks, and there was discussion of the report of the Royal Commission on Justices of the Peace. It was urged that solicitors should be eligible to be stipendiary magistrates and, indeed, be permitted to occupy many positions at present reserved to the Bar. There was also some discussion on the question of fusion with the Bar.

On the question of costs it was urged that steps should be taken to increase solicitors' costs in conveyancing and non-contentious matters. In addition the Council were asked to inquire into the possibility of some form of insurance against negligence for solicitors on lines similar to those of the medical profession. Reference was also made to the Council's activities in connection with overseas relations.

The main business of the meeting consisted in the discussion of the work of some of the most important committees of the Council. For this purpose the meeting broke into committees, the agenda for each committee having been prepared by the Chairman of the corresponding committee of the Council. It was not intended that discussion at the various committee meetings would necessarily be limited to matters on the agenda, and the printed programme, which had been distributed to members attending the meeting beforehand, invited members to write at once to the Secretary giving specific questions which they wished to raise. In fact all eight committee meetings were well attended, the most popular, not unexpectedly, proving to be the Professional Business Committee, which is concerned with the implementing of the Rushcliffe Scheme. On the afternoon of Tuesday, 21st September, the work of the following committees came under review: the Finance Committee, the Scale Committee, the Professional Purposes Committee and the Cost of Litigation Committee; and on the following afternoon the discussions concerned the Legal Education Committee, the Legal Procedure Committee, the Professional Business Committee and the Parliamentary Committee.

The highlight of the Wednesday's proceedings was an address given in the morning by Sir Malcolm Trustram Eve, K.C., Chairman of the Central Land Board, on "The Work of the Central Land Board." The principal matter to which Sir Malcolm drew attention was the widespread practice whereby land was changing hands at its unrestricted value instead of at existing use value, sometimes with an assignment to the purchaser of the vendor's claim on the compensation fund. In such cases, he said, the Minister of Town and Country Planning had consented to the exercise by the Central Land Board of their powers of compulsory purchase if an undertaking to sell at existing use value could not be obtained from the vendor.

The final plenary session was held on Thursday, 23rd September, following an address by the Rt. Hon. Sir David Patrick Maxwell Fyfe on "The Lawyer and the Legal System—Reflections on an attempt to make the English and Continental systems operate together." At the close of his address Sir David dealt with a large number of questions arising out of his address. The address and discussion proved so popular that it was impossible, as had originally been intended, for the Chairmen of the committees, who had met on the two preceding days, to make reports on the results of their meetings, and it was resolved by a large

majority that the reports should be circulated. The meeting then passed, with acclamation, a number of resolutions of thanks.

The programme of the meeting included a number of social events which proved highly popular. On Monday and Tuesday evenings there were receptions in the Royal Pavilion, at the first of which members and their ladies were received by the Mayor and Mayoress of Brighton and at the second by the PRESIDENT and Mrs. GILLETT and the VICE-PRESIDENT and Mrs. NEVIL SMART. Coach excursions were arranged for Tuesday and Thursday afternoons by the local host Law Societies. On Tuesday afternoon the ladies of the party visited Preston Manor, and on Thursday, members and their ladies went to Eastbourne for tea. On Wednesday evening, many members and their ladies visited the local theatres as guests of the Society and later in the evening there was a successful dance at the Grand Hotel.

On Tuesday, The Law Society Cricket Club played a strong Sussex Club and Ground XI at the County Ground, Hove. The result was a draw, Sussex scoring 276 for 4 wickets declared, and The Law Society replying with 187 for 3 wickets, before stumps were drawn at 6 o'clock.

An enjoyable golf competition was held on the East Brighton Links on Friday.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. BENJAMIN CHILTON, Registrar of the Reading, Hungerford, Newbury and Windsor County Courts and District Registrar in the District Registry of the High Court of Justice in Reading, to be, in addition, Registrar of the Basingstoke County Court as from 1st October, 1948.

Mr. M. R. R. DAVIES, Ph.D., LL.M., has been appointed Senior Lecturer in Law at Leeds University. He was admitted in 1941.

Mr. ROBERT R. J. TURNER has been appointed Chairman of the Law Debenture Corporation in place of the late Viscount Greenwood. Mr. Turner was admitted in 1903.

Notes

The Recorder of Stamford has fixed the next Quarter Sessions for the Borough of Stamford to be held on Wednesday, 27th October, 1948, at 11.30 a.m.

The Public Trustee (Custodian Trustee) Rules, 1948 (S.I. 1948 No. 2188 (L. 25)), which come into operation on 10th October, 1948, amend the Public Trustee Rules, 1912, so as to enable regional hospital boards, boards of governors of teaching hospitals and hospital management committees to act as custodian trustees for the purpose of any trust relating to hospital services or to the board's or committee's functions with respect to research.

The County Court Districts (Nelson) Order, 1948 (S.I. 1948 No. 2165 (L. 24)), which comes into operation on 1st November, 1948, provides that the Colne and Nelson County Court shall cease to be held at Colne and shall be held at Nelson by the name of the Nelson County Court (provided that no process shall be invalid if the court is described therein as the Colne and Nelson County Court), and that the registrar of the Nelson County Court shall cease to hold Registrars' Courts at Colne.

PROVINCIAL LAW SOCIETIES

An Extraordinary General Meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held at Llandudno on 29th September, 1948. The president (Mr. A. W. Chambers) reported on progress and that membership was now 211, and urged all members to join The Law Society. The Western minimum scale of charges was discussed. It received adverse criticism, principally on the ground that it was too rigid and that, if a solicitor had no discretion easily to modify his charges in a suitable case, it would bring the profession into disrepute. No vote was taken on the adoption of the scale. The meeting decided not to press for civil work to be taken at the Autumn Assizes at Caernarvon. The committee was asked to continue its efforts to re-establish law classes for articled clerks in North Wales, and members told of serious difficulties which arose from the absence of facilities. Strong approval was given of The Law Society's proposal to keep Chester and North Wales in one area under the Rushcliffe Scheme, as it was considered impossible to administer Wales, for this purpose, as one unit.

Wills and Bequests

Mr. W. Scorer, solicitor, of Blyth, Northumberland, left £4,737, with net personalty £4,710.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1691. **Act of Sederunt** (Rules of Court, consolidation and amendment) 1948. [Rules of the Court of Session, 1948.] July 1.

No. 2165. **County Court Districts** (Nelson) Order, 1948. September 21.

No. 2161. **Factories Acts** (Certificates of Fitness of Young Persons) (Adaptation) Regulations, 1948. September 22.

No. 2188. **Public Trustee** (Custodian Trustee) Rules, 1948. September 23.

No. 2163. **Young Persons** (Certificates of Fitness) (Prescribed Period) Order, 1948. September 22.

No. 2162. Young Persons (Certificates of Fitness) Rules, 1948. September 22.

LAND REGISTRY

Land Registration Forms Nos. 13 and 14 Combined. Caution against First Registration. (Reprint.)

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1948

HIGH COURT OF JUSTICE—CHANCERY DIVISION

GROUP A

Mr. Justice VAISEY

Mondays—Companies Business.
Such business as may from time to time be notified.

Mr. Justice ROXBURGH

Mr. Justice Roxburgh will sit for the disposal of the Witness List.

Mr. Justice WYNN PARRY

Mondays—Chambers Summons (Group A).
Tuesdays—Motions, Short Causes, Petitioners, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.

GROUP B

Mr. Justice ROMER

Mr. Justice Romer will sit for the disposal of the Witness List.

Mr. Justice JENKINS

Mondays—Chambers Summonses (Group B).
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.
Lancashire Business will be taken on Thursdays, 21st October, 4th and 18th November and 2nd and 16th December.

Mr. Justice HARMAN

Mondays—Bankruptcy Business.
Bankruptcy Motions and Bankruptcy Judgment Summonses will be heard on Mondays, 18th October, 1st, 15th and 29th November and 13th December.
A Divisional Court in Bankruptcy will sit on Mondays, 25th October, 8th and 22nd November and 6th December.
Such business as may from time to time be notified.

MICHAELMAS SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	EMERGENCY ROTA	APPEAL COURT I	Mr. Justice VAISEY *Business as listed*	Mr. Justice ROXBURGH *Witness*
Tues., Oct. 12	Mr. Farr	Mr. Reader	Mr. Hay	Mr. Reader
Wed., ,, 13	Adams	Hay	Farr	Hay
Thurs., ,, 14	Andrews	Farr	Adams	Farr
Fri., ,, 15	Jones	Adams	Andrews	Adams
Sat., ,, 16	Reader	Andrews	Jones	Andrews

Date	GROUP A Mr. Justice WYNN PARRY *Non-Witness*	Mr. Justice ROMER *Witness*	GROUP B Mr. Justice JENKINS *Non-Witness*	Mr. Justice HARMAN *Business as listed*
Tues., Oct. 12	Mr. Jones	Mr. Farr	Mr. Adams	Mr. Andrews
Wed., ,, 13	Reader	Adams	Andrews	Jones
Thurs., ,, 14	Hay	Andrews	Jones	Reader
Fri., ,, 15	Farr	Jones	Reader	Hay
Sat., ,, 16	Adams	Reader	Hay	Farr